

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Tony Hammond, Vice Chairman;
Mark Acton;
Ruth Y. Goldway; and
Nanci E. Langlely

Annual Compliance Report, 2014

Docket No. ACR2014

ORDER GRANTING CONTINUED ACCESS TO NON-PUBLIC MATERIALS

(Issued July 15, 2015)

By consent motion dated July 10, 2015, United Parcel Service (UPS) requested “an extension of the continued access to non-public materials the Commission granted in Order No. 2436.”¹ UPS also requests that the Commission grant access to the same non-public materials to three additional outside consultants. The Consent Motion is granted.

¹ United Parcel Service, Inc.’s Motion on Consent Requesting Continued Access to Non-Public Materials Under Protective Conditions, July 10, 2015, at 1 (Consent Motion).

I. BACKGROUND

On December 29, 2014, the Postal Service filed its Annual Compliance Report (ACR) for fiscal year 2014.² The Commission subsequently granted three UPS outside counsel and consultants access to 13 non-public files that had been submitted in connection with the 2014 ACR.³ Access to these files was later given to 10 additional personnel associated with UPS's outside counsel and consultants.⁴ Access to the non-public files was subject to protective conditions. See Order No. 2321 at 2; see also Order No. 2326 at 2. The Commission later granted continued access to the non-public materials for a period of 90 days from April 13, 2015.⁵

II. THE CONSENT MOTION

In its prior motion,⁶ UPS requested continued access to eight specific library references in order to develop a petition to change an accepted analytical principle.⁷ It asserted that “these particular library references...include the data that is most directly relevant to how the Postal Service is (or is not) attributing costs to competitive products.” Motion at 5. UPS asserted that the files to which it seeks continued access “are directly related to compliance issues generally” and “are directly relevant to

² United States Postal Service FY 2014 Annual Compliance Report, December 29, 2014 (2014 ACR).

³ Order Granting Request for Access, January 15, 2015 (Order No. 2321).

⁴ Order Granting Second Request for Access, January 16, 2015 (Order No. 2326).

⁵ Order Granting Continued Access to Non-Public Materials, April 13, 2015, at 6 (Order No. 2436).

⁶ United Parcel Service, Inc.'s Motion Requesting Continued Access to Non-Public Materials Under Protective Conditions, March 27, 2015, at 1 (Motion).

⁷ The eight library references are: Library Reference USPS-LR-NP10, December 29, 2014 (Competitive Product Incremental and Group Specific Costs); Library Reference USPS-LR-NP11, December 29, 2014 (Non Public CRA); Library Reference USPS-LR-NP12 (Non Public Cost Segments and Components); Library Reference USPS-LR-NP13 (Non public CRA Model); Library Reference USPS-LR-NP14 (CRA B Workpapers); Library Reference USPS-LR-NP19 (Piggybacks); Library Reference USPS-LR-NP20 (Mail Processing Costs by Shape); and Library Reference USPS-LR-NP22 (City Carrier Costing System) (collectively, Exhibit 1 Library References).

analyses UPS would like to conduct regarding the Postal Service's compliance with...39 U.S.C. § 3633." *Id.* at 2.

In its Consent Motion, UPS seeks a second extension of access to the non-public materials. UPS represents that its "outside counsel and consultants have worked diligently to prepare UPS's forthcoming petition," which it anticipates filing in early September 2015, concerning analytical principles used for costing of competitive products. Consent Motion at 2. UPS also asserts that its consultants require continued access to complete their analyses of the non-public materials. *Id.* at 2. UPS seeks continued access for a period of 90 days from the date of the Commission's order granting such access. *Id.* at 3. UPS also requests to extend the same access to three additional outside consultants. *Id.* at 3.

UPS asserts that continued access to the Postal Service's 2014 ACR library references is contemplated by 39 C.F.R. § 3007.50(a), which gives persons the right to request "continued access to...non-public materials relevant to compliance." 39 C.F.R. § 3007.50(a). UPS also cites Order Nos. 2321, 2326, and 2436 for the proposition that the Commission has previously granted UPS's outside counsel and consultants access to non-public materials. *Id.* UPS represents that the Postal Service has consented to the request. Consent Motion at 3.

III. DISCUSSION

UPS makes its request for continued access pursuant to 39 C.F.R. § 3007.50. Consent Motion at 1. As the Commission found in Order No. 2436, UPS's continued work on a petition to change an accepted analytical principle warrants continued access. Order No. 2436 at 5.

The Commission concludes that UPS's representation that it is working to prepare a petition to be filed in early September 2015, is sufficient to warrant granting continued access to the non-public materials for the additional 90-day period requested. The Commission's conclusion in this regard is informed by the work that UPS has

already performed toward its contemplated rulemaking petition. Further, the Postal Service has consented to the request.

Regarding the request that three additional consultants be granted access, the Commission finds that the UPS Motion satisfies the requirements of 39 C.F.R. § 3007.50 for access to non-public material. Accordingly, the Commission concludes it is appropriate to grant access to the Exhibit 1 Library References for the additional persons identified in the Consent Motion.

IV. ORDERING PARAGRAPHS

It is ordered:

1. United Parcel Service, Inc.'s Consent Motion Requesting Continued Access to Non-Public Materials Under Protective Conditions, filed July 10, 2015, is granted.
2. Access to the non-public materials granted by the Commission in Order No. 2436 shall be extended for a period of 90 days to the outside counsel and consultants previously given access in Order Nos. 2321, 2326, and 2436.
3. The outside counsel and consultants identified in Exhibit A to United Parcel Service, Inc.'s Consent Motion, filed July 10, 2015, shall be granted access to the non-public materials described in the body of this Order for a period of 90 days.

By the Commission.

Ruth Ann Abrams
Acting Secretary